

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KARL E. EDWARDS and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, SHARPE ARMY DEPOT, Stockton, CA

*Docket No. 01-1777; Submitted on the Record;
Issued February 27, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award.

The Board has duly reviewed the entire record and finds that the Office properly denied appellant's claim for a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

The schedule award provisions of the Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use of, scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. §§ 8101-8193.

² See *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ See *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

On December 12, 1995 appellant, then a 39-year-old material handler foreman, sustained a lumbar strain while in the performance of duty.⁶

On November 25, 1997 appellant filed a claim for a recurrence of disability and his case was reopened as he continued to have low back pain.

On June 22, 1999 appellant filed a claim for a schedule award.

By decision dated August 21, 2001, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that he had any permanent impairment of a part of the body or body function provided for under the Act.

In a report dated February 26, 1998, Dr. Michael K. Park, appellant's attending Board-certified physiatrist, diagnosed a herniated disc at L4-5 and L5-S1 with bilateral radicular pain syndrome. However, the accepted condition in this case is a lumbar strain. Dr. Park provided no rationale explaining how appellant's herniated disc and radiculopathy were causally related to his December 12, 1995 employment injury. Therefore, this report is insufficient to establish that appellant had any permanent impairment due to his employment injury which entitled him to receive a schedule award.

In three form reports dated March 26, 1998, Dr. Park diagnosed a sprain/strain of the lumbar spine, a herniated disc and lumbar radiculopathy. He checked the block marked "yes", indicating that the conditions were causally related to appellant's December 12, 1995 employment injury. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁷ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁸ Therefore, these reports are not sufficient to establish that appellant had any permanent impairment due to a herniated disc or lumbar radiculopathy causally related to his December 12, 1995 employment injury.

In a report dated August 25, 1998, Dr. Park stated that appellant had worsening pain in the lower back going down into the leg and instability in the lower back. He stated that an electromyogram and nerve conduction study on April 7, 1998 revealed nerve root compression at the L5-S1 disc level. In a report dated November 6, 1998, Dr. Park stated that appellant had persistent pain, tingling and numbness in his leg. However, Dr. Park did not explain how appellant's back and leg conditions were causally related to his December 12, 1995 employment injury. Therefore, these reports are not sufficient to establish that appellant had any permanent impairment causally related to his December 12, 1995 employment injury.

⁶ Appellant also had work-related injuries in 1978, 1981, 1983 and 1985. These claims were consolidated on March 6, 1998.

⁷ See *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁸ *Id.*

In a report dated July 8, 1999, Dr. Kevin C. Booth, an orthopedic surgeon, diagnosed mechanical lumbar back pain with lower extremity dysesthesias (sensory impairment). He noted that an April 4, 1997 magnetic resonance imaging scan was consistent with multi-level degenerative disease, predominantly at L4-5 and L5-S1 but did not show any significant evidence of neurologic compression that would explain appellant's lower extremity numbness, tingling and weakness. Dr. Booth recommended further testing to determine the cause of appellant's lower extremity numbness. As Dr. Booth did not explain how appellant's back and lower extremity problems were causally related to his December 12, 1995 employment injury, his report is not sufficient to support appellant's claim for a schedule award.

A schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.⁹ As the medical evidence of record did not establish that appellant had any permanent impairment to a part of the body or body function covered by the Act, causally related to his December 12, 1995 employment injury, the Office properly denied his claim for a schedule award.

The decision of the Office of Workers' Compensation Programs dated August 21, 2001 is affirmed.

Dated, Washington, DC
February 27, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *George E. Williams*, 44 ECAB 530 (1993); *James E. Mills*, 43 ECAB 215 (1991).